

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 98-0155****Withholding Tax****For Year 1992**

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ISSUE**I. Responsible Officer Liability – Duty to Remit Withholding Taxes**

Authority: Ind. Code § 6-3-4-8;
Ind. Code § 6-8.1-5-1;
Indiana Department of State Revenue v. Safayan, 654 N.E.2d 270 (Ind. 1995).

The taxpayer protests the assessment of withholding tax liability as a responsible officer.

STATEMENT OF FACTS

The taxpayer is the President of an Indiana company that did not submit withholding taxes to the Department of Revenue for the year 1992. The Department assessed liability for the taxes to the taxpayer. The taxpayer is protesting the determination that she is liable as a responsible officer for the payment of the taxes. At the administrative hearing on this matter, the taxpayer did not submit any evidence showing that she was not responsible for the taxes. The taxpayer asked for, and was given, an additional three weeks to submit such evidence. No evidence was submitted.

I. Responsible Officer Liability – Duty to Remit Withholding Taxes**DISCUSSION**

The taxpayer argues that she is not liable as a responsible officer for the withholding taxes, that were not submitted to the Department, from the company she was President of for the year 1992. "The notice of proposed assessment is *prima facie* evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Ind. Code § 6-8.1-5-1(b). The taxpayer has failed to submit any evidence to show that she was not a responsible officer.

Ind. Code § 6-3-4-8(e) states in relevant part:

All money deducted and withheld by an employer shall immediately upon such deduction be the money of the state, and every employer who deducts and retains any amount of money under the provisions of IC 6-3 shall hold the same in trust for the state of Indiana and for payment thereof to the department in the manner and at the times provided in IC 6-3.

Additionally, Ind. Code § 6-3-4-8(f) states in part:

In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.

The Indiana Supreme Court has identified three factors to consider when determining liability as a responsible officer: 1.) the person's position within the structure of the corporation; 2.) the authority of the person as established by the articles of incorporation, bylaws, or the person's employment contract; and 3.) whether the person actually exercised control over the corporation's finances by, for example, signing corporate checks. Indiana Department of State Revenue v. Safayan, 654 N.E.2d 270, 273 (Ind. 1995). In the instant case, the taxpayer admits that she was President of the company during the time period when the withholding taxes were due and that she signed all the payroll checks. She also signed the Indiana Department of Revenue Business Tax Application as President and executed a Power of Attorney form on behalf of the company for representation in this matter. The taxpayer is a responsible officer as defined by the Court in Safayan and is, therefore, personally liable for the payment of the withholding taxes.

FINDING

The taxpayer's protest is denied.